



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bootz Distribution

File: B-251155

Date: February 10, 1993

Hank Bootz for the protester.

Joseph N. Hoback, Department of the Treasury, United States Mint, for the agency.

Behn Miller, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where bidder failed to sign required Certificate of Procurement Integrity on designated signature line, bidder is not unequivocally committed to certificate's terms and bid must be rejected as nonresponsive; under these circumstances, bidder is not an interested party to challenge agency's rejection of its bid due to an inadequate bid guarantee since bidder's failure to sign the required certificate renders it ineligible for award even if protest were sustained.

DECISION

Bootz Distribution protests the rejection of its bid as nonresponsive under invitation for bids (IFB) No. USM 92-65, issued by the Department of the Treasury, United States Mint, for storage and drayage services for the Denver, Colorado, Mint. Bootz contends that an "error" in its bid guarantee does not provide a basis for rejecting its bid as nonresponsive.

We dismiss the protest.

The solicitation was issued as a total small business set-aside on August 25, 1992, and contemplated the award of a fixed-price contract for a 1-year base period and 2 option years. The IFB required that bidders submit bid guarantees in the amount of 20 percent of the bid price and indicated that the minimum bid acceptance period was 60 days; additionally, because the contract award was expected to exceed \$100,000, the solicitation incorporated the requirement for a Certificate of Procurement Integrity clause pursuant to Federal Acquisition Regulation (FAR) § 52.203-9.

By the September 28 bid opening, five bids were received. Although Bootz was the apparent low bidder, the agency rejected its bid as nonresponsive since the irrevocable letter of credit (LOC) submitted as its bid guarantee was only effective for 30 days--from September 25 until October 24, 1992. On October 29, Bootz filed this protest with our Office;¹ in its protest Bootz contends that the October 24 limitation in its LOC is the result of an "honest mistake" and, accordingly, the agency should permit Bootz to correct this error so that it can receive contract award as the low bidder.

Under the Competition in Contracting Act of 1984, and our Regulations, a protester must qualify as an interested party before its protest may be considered by our Office. See 31 U.S.C. § 3553 (1988); 4 C.F.R. § 21.1(a) (1992). That is, a protester must have a direct economic interest which would be affected by the award of a contract or the failure to award a contract. 31 U.S.C. § 3551(2); 4 C.F.R. § 21.0(a). Here, even if we were to sustain Bootz's protest, the record shows that Bootz would not be eligible for award since it failed to sign the required Certificate of Procurement Integrity.

The Certificate of Procurement Integrity requirement, set forth at FAR § 52.203-9, implements the Office of Federal Procurement Policy (OFPP) Act, 41 U.S.C. § 423 (1988 and Supp. II 1990), a statute which bars agencies from awarding contracts unless a bidder or offeror certifies in writing that neither it nor its employees have any information concerning violations or possible violations of the procurement integrity provisions of the OFPP Act set forth elsewhere in 41 U.S.C. § 423. Shifa Servs., Inc., 70 Comp. Gen. 502 (1991), 91-1 CPD ¶ 483. As a result of the substantial legal obligations imposed by the certification, omission from a bid of a signed Certificate of Procurement Integrity leaves unresolved a bidder's agreement to comply with a material requirement of the IFB; accordingly, a bidder's failure to submit a signed certificate with its bid is a material deficiency requiring that the bid be rejected as nonresponsive.² See FAR § 14.404-2(m);

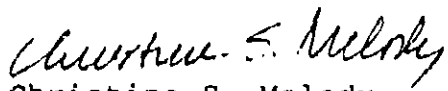
¹On October 19, the agency awarded a contract to U.S. Transfer & Storage Co. in the amount of \$271,912; on October 21, the contracting officer notified Bootz by telephone that its bid had been rejected as nonresponsive.

²Because the certifier's additional obligations are material, we cannot consider the protester's failure to furnish a signed certificate with its bid a minor informality capable of being cured after bid opening; to do
(continued...)

Hein-Werner Corp., 71 Comp. Gen. 421 (1992), 92-1 CPD ¶ 484;
Mid East Contractors, Inc., 70 Comp. Gen. 393 (1991), 91-1
CPD ¶ 342.

In this case, the record shows that although Bootz's certificate identified an individual responsible for the additional requirements imposed by the terms of the certificate, that individual did not sign the certificate's designated signature line, and thus did not establish the protester's intent to be bound to the terms of the certificate. See G. Penza & Sons, Inc., B-249321, Sept. 2, 1992, 92-2 CPD ¶ 147. Since Bootz's failure to sign the Certificate of Procurement Integrity clearly renders its bid nonresponsive and therefore ineligible for award, Bootz would not be in line for award even if its protest regarding the rejection of its bid due to an improper bid guarantee were sustained. Under these circumstances, Bootz lacks the direct economic interest necessary to be an interested party to pursue the protest.¹ See U.S. Def. Sys., Inc., B-248928, Sept. 30, 1992, 92-2 CPD ¶ 219.

The protest is dismissed.


Christine S. Melody
Assistant General Counsel

²(...continued)

so would permit a bidder to decide after bid opening whether to comply with a material term of an IFB, which constrains the integrity of the competitive bidding system by giving otherwise successful bidders an opportunity to walk away from a low bid. See Three D. Indus. Maintenance Corp.--Recon., B-245422.2, Feb. 6, 1992, 92-1 CPD ¶ 152.

³In any event, a bid providing a lesser bid acceptance period than that specified in the solicitation is nonresponsive, and the deviation cannot be corrected or waived since a bidder offering a shorter acceptance period is not exposed to market place risks and fluctuations for as long as its competitors are and may thereby gain an unfair advantage over bidders that offered the specified period. Imperial Maintenance, Inc., B-247371; B-247372, May 22, 1992, 92-1 CPD ¶ 464. Here, the solicitation's minimum bid acceptance period was 60 days; thus, Bootz's submission of an LOC that protected the government only until October 24 effectively reduced Bootz's bid acceptance period to 27 days from the time of the September 28 bid opening, and as such, clearly required rejection of its bid as nonresponsive. Id.